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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PULSE-LINK INCORPORATED,)	Civil No. 07cv1125 L(AJB)
)	
Plaintiff,)	
v.)	ORDER GRANTING JOINT MOTION
)	FOR PROTECTIVE ORDER
TZERO TECHNOLOGIES, INC.,)	
)	
Defendants.)	
)	
_____)	
and related counterclaims.)	
_____)	

The Court recognizes that at least some of the documents and information being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have submitted a Joint Motion for Protective Order and have agreed to be bound by its terms in this action. The Court hereby GRANTS the parties' Joint Motion for Protective Order and ENTERS the Protective Order as follows:

DEFINITIONS

1. The term "Confidential Information" shall mean and include information contained or disclosed in any materials, including documents, portions of documents, answers to interrogatories, responses to requests for admissions, trial testimony, deposition testimony, and transcripts of trial testimony and depositions, including data, summaries, and compilations derived

therefrom that is deemed to be Confidential Information by any party to which it belongs.

2. The term “materials” shall include, but shall not be limited to: documents; correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other material that identify customers or potential customers; price lists or schedules or other matter identifying pricing; minutes; telegrams; letters; statements; cancelled checks; contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk diaries; appointment books; expense accounts; recordings; photographs; motion pictures; compilations from which information can be obtained and translated into reasonably usable form through detection devices; sketches; drawings; notes (including laboratory notebooks and records); reports; instructions; disclosures; other writings; models and prototypes and other physical objects.

3. The term “counsel” shall mean outside counsel of record, and other attorneys, paralegals, secretaries, and other support staff employed in the law firms identified below:

- HELLER EHRMAN LLP, 4350 La Jolla Village Drive, 7th Floor, San Diego, CA 92122-1246
- ISBESTER & THACKRAY, LLP, 3160 College Avenue, Suite 203, Berkeley, CA 94705

GENERAL RULES

3. Each party to this litigation that produces or discloses any materials, answers to interrogatories, responses to requests for admission, trial testimony, deposition testimony, and transcripts of trial testimony and depositions, or information that the producing party believes should be subject to this Protective Order may designate the same as “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY.”

(a) Designation as “CONFIDENTIAL”: Any party may designate information as “CONFIDENTIAL” only if, in the good faith belief of such party and its counsel, the unrestricted disclosure of such information could be potentially prejudicial to the business or operations of such party.

1 (b) Designation as "CONFIDENTIAL - FOR COUNSEL ONLY": Any party may
2 designate information as "CONFIDENTIAL - FOR COUNSEL ONLY" only if, in the good
3 faith belief of such party and its counsel, the information is among that considered to be most
4 sensitive by the party, including but not limited to trade secret or other confidential research,
5 development, financial or other commercial information.

6 4. In the event the producing party elects to produce materials for inspection, no
7 marking need be made by the producing party in advance of the initial inspection. For purposes
8 of the initial inspection, all materials produced shall be considered as "CONFIDENTIAL - FOR
9 COUNSEL ONLY," and shall be treated as such pursuant to the terms of this Order. Thereafter,
10 upon selection of specified materials for copying by the inspecting party, the producing party
11 shall, within a reasonable time prior to producing those materials to the inspecting party, mark
12 the copies of those materials that contain Confidential Information with the appropriate
13 confidentiality marking.

14 5. Whenever a deposition taken on behalf of any party involves a disclosure of
15 Confidential Information of any party:
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17 (a) said deposition or portions thereof shall be designated as containing Confidential
18 Information subject to the provisions of this Order; such designation shall be made on the record
19 whenever possible, but a party may designate portions of depositions as containing Confidential
20 Information after transcription of the proceedings; a party shall have until fifteen (15) days after
21 receipt of the deposition transcript to inform the other party or parties to the action of the
22 portions of the transcript designated "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUN-
23 SEL ONLY;"

24 (b) the disclosing party shall have the right to exclude from attendance at said
25 deposition, during such time as the Confidential Information is to be disclosed, any person other
26 than the deponent, counsel (including their staff and associates), the court reporter, and the
27 person(s) agreed upon pursuant to paragraph 8 below; and
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1 (c) the originals of said deposition transcripts and all copies thereof shall bear the
2 legend "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY," as appropriate,
3 and the original or any copy ultimately presented to a court for filing shall not be filed unless it
4 can be accomplished under seal, identified as being subject to this Order, and protected from
5 being opened except by order of this Court.

6 6. All Confidential Information designated as "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY" shall not be disclosed by the receiving party to anyone other
7 than those persons designated herein and shall be handled in the manner set forth below and, in
8 any event, shall not be used for any purpose other than in connection with this litigation, unless
9 and until such designation is removed either by agreement of the parties, or by order of the
10 Court.

11 7. Information designated "CONFIDENTIAL - FOR COUNSEL ONLY" shall be
12 viewed only by counsel (as defined in paragraph 3) of the receiving party, and by independent
13 experts under the conditions set forth in this Paragraph. The right of any independent expert to
14 receive any Confidential Information shall be subject to the advance approval of such expert by
15 the producing party or by permission of the Court. The party seeking approval of an independent
16 expert shall provide the producing party with the name and curriculum vitae of the proposed
17 independent expert, and an executed copy of the form attached hereto as Exhibit A, in advance
18 of providing any Confidential Information of the producing party to the expert. Any objection by
19 the producing party to an independent expert receiving Confidential Information must be made
20 in writing within five (5) business days following receipt of the identification of the proposed
21 expert. Confidential Information may be disclosed to an independent expert if the five (5)
22 business day period has passed and no objection has been made. The approval of independent
23 experts shall not be unreasonably withheld.

24 8. Information designated "CONFIDENTIAL" shall be viewed only by counsel (as
25 defined in paragraph 3) of the receiving party, by independent experts (pursuant to the terms of
26 paragraph 8), and by the additional individuals listed below, provided each such individual has
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1 read this Order in advance of disclosure and has agreed in writing to be bound by its terms:

- 2 (a) Executives who are required to participate in policy decisions with reference to
3 this action;
- 4 (b) Technical personnel of the parties with whom Counsel for the parties find it
5 necessary to consult, in the discretion of such counsel, in preparation for trial of
6 this action; and
- 7 (c) Stenographic and clerical employees associated with the individuals identified
8 above.

9 9. With respect to material designated "CONFIDENTIAL" or "CONFIDENTIAL -
10 FOR COUNSEL ONLY," any person indicated on the face of the document to be its originator,
11 author or a recipient of a copy thereof, may be shown the same regardless of whether they are an
12 identified as being allowed access to the document under either of paragraphs 9 or 10 above.

13 10. All information which has been designated as "CONFIDENTIAL" or "CONFIDENTIAL -
14 FOR COUNSEL ONLY" by the producing or disclosing party, and any and all
15 reproductions thereof, shall be retained in the custody of the counsel for the receiving party
16 identified in paragraph 3, except that independent experts authorized to view such information
17 under the terms of this Order may retain custody of copies such as are necessary for their
18 participation in this litigation.

19 11. Before any materials designated as Confidential Information (including materials
20 produced in discovery, answers to interrogatories, responses to requests for admissions,
21 deposition transcripts, or other documents) are filed with the Court for any purpose, the party
22 seeking to file such material shall first seek permission from the disclosing party to file such
23 materials with the Court. Should the disclosing party feel that the materials in issue continue to
24 need protection, the party seeking to file such material must seek permission of the Court to file
25 said material under seal. The parties will follow and abide by applicable law, including Civ.
26 L.R. 7.3, with respect to filing documents under seal in this Court.

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1 12. At any stage of these proceedings, any party may object to a designation of the
2 materials as Confidential Information. The party objecting to confidentiality shall notify, in
3 writing, counsel for the designating party of the objected-to materials and the grounds for the
4 objection. If the dispute is not resolved consensually between the parties within seven (7)
5 business days of receipt of such a notice of objections, the objecting party may move the Court
6 for a ruling on the objection. The materials at issue shall be treated as Confidential Information,
7 as designated by the designating party, until the Court has ruled on the objection or the matter
8 has been otherwise resolved.

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10 13. All Confidential Information shall be held in confidence by those inspecting or
11 receiving it, and shall be used only for purposes of this action. Counsel for each party, and each
12 person receiving Confidential Information shall take reasonable precautions to prevent the
13 unauthorized or inadvertent disclosure of such information. If Confidential Information is
14 disclosed to any person other than a person authorized by this Order, the party responsible for
15 the unauthorized disclosure must immediately bring all pertinent facts relating to the unautho-
16 rized disclosure to the attention of the other parties and, without prejudice to any rights and
17 remedies of the other parties, make every effort to prevent further disclosure by the party and by
18 the person(s) receiving the unauthorized disclosure.

19 14. No party shall be responsible to another party for disclosure of Confidential
20 Information under this Order if the information in question is not labeled or otherwise identified
21 as such in accordance with this Order.

22 15. If a party, through inadvertence, produces any Confidential Information without
23 labeling or marking or otherwise designating it as such in accordance with this Order, the
24 designating party may give written notice to the receiving party that the document or thing
25 produced is deemed Confidential Information, and that the document or thing produced should
26 be treated as such in accordance with that designation under this Order. The receiving party must
27 treat the materials as confidential, once the designating party so notifies the receiving party. If
28 the receiving party has disclosed the materials before receiving the designation, the receiving

1 party must notify the designating party in writing of each such disclosure. Counsel for the parties
2 shall agree on a mutually acceptable manner of labeling or marking the inadvertently produced
3 materials as "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY" - SUBJECT
4 TO PROTECTIVE ORDER.

5 16. If information is produced in discovery that is subject to a claim of privilege or of
6 protection as trial-preparation material, the party making the claim may notify any party that
7 received the information of the claim and the basis for it. The parties have agreed that any such
8 inadvertent production of privileged or protected material does not act as an automatic waiver of
9 the privilege or protection. After being notified, a party must promptly return, sequester, or
10 destroy the specified information and any copies it has and may not use or disclose the informa-
11 tion until the claim is resolved. A receiving party may promptly present the information to the
12 court under seal for a determination of the claim. If the receiving party disclosed the information
13 before being notified, it must take reasonable steps to retrieve it. The producing party must
14 preserve the information until the claim is resolved.

15 17. Nothing herein shall prejudice the right of any party to object to the production of
16 any discovery material on the grounds that the material is protected as privileged or as attorney
17 work product.

18 18. Nothing in this Order shall bar counsel from rendering advice to their clients with
19 respect to this litigation and, in the course thereof, relying upon any information designated as
20 Confidential Information, provided that the contents of the information shall not be disclosed.

21 19. This Order shall be without prejudice to the right of any party to oppose produc-
22 tion of any information for lack of relevance or any other ground other than the mere presence of
23 Confidential Information. The existence of this Order shall not be used by either party as a basis
24 for discovery that is otherwise improper under the Federal Rules of Civil Procedure.

25 20. Nothing herein shall be construed to prevent disclosure of Confidential Informa-
26 tion if such disclosure is required by law or by order of the Court.
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1 21. Upon final termination of this action, including any and all appeals, counsel for
2 each party shall, upon request of the producing party, return all Confidential Information to the
3 party that produced the information, including any copies, excerpts, and summaries thereof, or
4 shall destroy same at the option of the receiving party, and shall purge all such information from
5 all machine-readable media on which it resides. Notwithstanding the foregoing, counsel for each
6 party may retain all pleadings, briefs, memoranda, motions, and other documents filed with the
7 Court that refer to or incorporate Confidential Information, and will continue to be bound by this
8 Order with respect to all such retained information. Further, attorney work product materials that
9 contain Confidential Information need not be destroyed, but, if they are not destroyed, the person
10 in possession of the attorney work product will continue to be bound by this Order with respect
11 to all such retained information.

12 22. The restrictions and obligations set forth herein shall not apply to any information
13 that: (a) the parties agree should not be designated Confidential Information; (b) the parties
14 agree, or the Court rules, is already public knowledge; (c) the parties agree, or the Court rules,
15 has become public knowledge other than as a result of disclosure by the receiving party, its
16 employees, or its agents in violation of this Order; or (d) has come or shall come into the
17 receiving party's legitimate knowledge independently of the production by the designating party.
18 Prior knowledge must be established by production documentation.

19 23. The restrictions and obligations herein shall not be deemed to prohibit discussions
20 of any Confidential Information with anyone if that person already has or obtains legitimate
21 possession thereof.

22 24. Transmission by facsimile is acceptable for all notification purposes herein.

23 25. This Order may be modified by agreement of the parties, subject to approval by the
24 Court.

25 26. The Court may modify the terms and conditions of this Order for good cause, or in
26 the interest of justice, or on its own order at any time in these proceedings. The parties prefer
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1 that the Court provide them with notice of the Court's intent to modify the Order and the content
2 of those modifications, prior to entry of such an order.

3 IT IS SO ORDERED.
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6 DATED: November 21, 2007
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10 Hon. Anthony J. Battaglia

11 U.S. Magistrate Judge

12 United States District Court
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